

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.**

WRIT PETITION NO.705 OF 2006

Vijay Madhav Mohite & Ors, .. Petitioners.
Vs
Vishwas Dada Patil, .. Respondent.
Mr Amit Borkar, for the petitioners.
Mr G.N.Salunke, for the respondent.

CORAM : D.B.BHOSALE, J.
DATE : 21.08.2006

PC:

1. Heard the learned counsel for the parties.
2. The petitioners have challenged the concurrent findings recorded by the courts below in the suit filed by the respondent-plaintiff (tenant) for mandatory injunction against the petitioner-landlord seeking direction to restore electric as well as water connection and permission to carry out repairs in the suit premises. Mr Borkar, learned counsel for the petitioner, challenged the decree solely on the ground that the respondent-tenant, son of the original tenant, has failed to establish that he was residing in the suit premises at the time of the death of his father and, therefore, cannot claim any right in the suit premises as contemplated under section 5(11)(c)(ii) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. I perused both the judgments as also the evidence with

the assistance of the learned counsel for the parties. It is clear that both the courts, after appreciating the evidence placed on record, have recorded a positive finding that the respondent was in possession of the suit premises when his father, original tenant, died. The finding to that effect has been recorded by the appeal court in paragraphs 23 and 24 of the judgment. Merely because the petitioner was residing with his maternal uncle during his childhood, does not mean that he was not residing with his parents in the suit premises at the time of his father's death. Considering that there are concurrent findings recorded by both the Courts below and as I find that there is sufficient material on record to sustain those findings and considering the extremely limited jurisdiction of this Court under Article 227 of the Constitution of India to disturb the findings of fact, the present writ petition cannot be entertained. Hence, the writ petition, fails and is dismissed as such.

(D.B.BHOSALE, J.)